

## 950 CMR 62:00 Trademark Administration, General Provisions and Definitions

### 62.01 Purpose

- (1) 950 CMR 62.00 describes the practices and procedures of the Secretary of the Commonwealth relative to M.G.L. c.110H, Registration and Protection of Trademarks.
- (2) The Trademark Section, which is under the supervision of the Director of the Corporations Division, administers the provisions of the General Laws c.110H pertaining to trademarks and service marks. The Director is empowered to hear, examine and investigate matters subject to G.L. c. 110H and may, subject to the approval of the Secretary, make, amend and rescind such rules, forms and orders contemplated thereby and, without limiting the generality of the foregoing, issue written interpretations thereof.
- (3) From time to time, the Director may authorize exceptions to 950 CMR 62.00 with respect to any specific requirement provided that such exceptions to 950 CMR 62.00 are in conformity with the provisions of the Massachusetts General Laws.

### 62.02 Definitions

For the purposes of 950 CMR 62.00, unless the context otherwise requires, the following terms shall have the meanings indicated:

Act means M.G.L. c.110H relative to Registration and Protection of Trademarks.

Applicant means a person filing an application for registration of a mark under G.L. c.110H and the legal representatives, successors or assigns of that person.

Business Entity means a corporation, limited partnership, general partnership, limited liability company, joint venture, joint stock company, business trust or unincorporated association.

Director means the Director of the Corporations Division.

Division means the Corporations Division in the Office of the Secretary of the Commonwealth.

Division's website means the Secretary of the Commonwealth's website at [www.sec.state.ma.us/cor](http://www.sec.state.ma.us/cor).

Document means the application to register a mark, a registrant name or address amendment, an assignment or renewal.

Mark means a trademark or service mark entitled to registration under G.L. c.110H whether registered or not.

Person means a juristic person as well as a natural person and includes a firm, partnership, corporation, union, association or other organization capable of suing and being sued in a court of law.

Registrant means a person to whom the registration of a mark is issued and the legal representatives, successors or assigns of that person.

Refusal to file means the determination by the Trademark Section that a mark may not be registered under the relevant provisions of law or regulation.

Service mark means a word, name, symbol or device or any combination thereof used by a person, to identify and distinguish the services of one person, including a unique service, from the services of others, and to indicate the source of the services, even if that source is unknown. Title, character names used by a person and other distinctive features of radio or television programs may be registered as service marks notwithstanding that they, or the programs, may advertise goods of the sponsor.

Trademark means a word, name, symbol or device or any combination thereof used by a person to identify and distinguish goods of that person, including a unique product, from those manufactured or sold by others, and to indicate the source of the goods, even if that source is unknown.

Tradename means any name used by a person to identify a business or vocation of that person.

Use means the bona fide use of a mark in the ordinary course of trade, and not merely to reserve a right in a mark. A mark shall be considered in use:

- (i) on goods when it is placed in any manner on the goods or other containers or the displays associated therewith or on the tags or labels affixed thereto, or if the nature of the goods makes the placement impracticable, then on the documents associated with the goods or their sale and the goods are sold or transported in commerce in the Commonwealth, and
- (ii) on services when used or displayed in the sale or advertising of services and the services are rendered in the Commonwealth.

### 62.03 Singular and Plural Forms

Singular nouns shall include the plural form and plural nouns shall include the singular unless the context otherwise requires.

### 62.04 Place to File

Documents shall be mailed or delivered to the Division at:

Secretary of the Commonwealth  
Corporations Division, Trademark Section  
One Ashburton Place, 17<sup>th</sup> Floor  
Boston, MA 02108-1512

If the document is mailed the envelope shall clearly identify the type of document enclosed. Documents submitted to any other area of the office, to any district office or not properly addressed will not be considered received by the Division at the address noted above.

#### 62.05 On-line Services

- (1) The Division offers on-line services at the Division's website. Services offered on line include filing documents via facsimile, forms and searches of the trademark and service mark database.
- (2) General inquiries to the Trademark Section may also be made by electronic mail to [corpinfo@sec.state.ma.us](mailto:corpinfo@sec.state.ma.us). Electronic mail cannot be used to file trademark/service mark documents, request certificates or searches of the records.

#### 62.06 Division Hours

- (1) The regular business hours of the trademark section are Monday through Friday from 8:45 a.m. to 4:00 p.m. excluding holidays. The regular business of the public search room and phone room are Monday through Friday from 8:45 a.m. to 5:00 p.m. excluding holidays.

#### 62.07 General Filing Requirements

- (1) A document shall be submitted in the English language.
- (2) A document shall be typed or printed. It may not be handwritten.
- (3) A document shall contain all of the information required by M.G.L. c.110H and 950 CMR 62.00.
- (4) A document must be signed, and verified, by oath, affirmation or declaration subject to perjury laws by the applicant or by a member of the firm or an officer of the corporation or association. The signature must be original unless submitted by authorized facsimile transmission. If the applicant is a juristic person, the capacity of the lawfully authorized representative must be provided.
- (5) The Division waives the requirement of three specimens contained in G.L. c.110H § 3(e). An application to register a mark or to renew a mark need only be accompanied by one specimen not larger than 3" by 3".

#### 62.08 Forms

The Division supplies forms for documents to be filed with the Trademark Section. The use of official forms is optional. Copies of the forms are available in the Office of the Secretary of the Commonwealth or on the Division's website. Any document submitted to the Division not on an official form must be on standard size paper, 8 ½ by 11 inches and follow the format specifications contained in 950 CMR 62.00. The minimum font size is 10. A document which does not comply with size requirements, format specifications or font size will be rejected.

#### 62.09 Document Delivery

A document may be tendered for filing by:

- (1) personal or courier delivery to the Division at Secretary of the Commonwealth, Corporations Division, Trademark Section, One Ashburton Place, 17<sup>th</sup> Floor, Boston, Massachusetts, during regular business hours;
- (2) postal service delivery addressed to Secretary of the Commonwealth, Corporations Division, Trademark Section, One Ashburton Place, 17<sup>th</sup> Floor, Boston, MA 02108. Additionally, the envelope must identify the type of document enclosed; or
- (3) facsimile delivery in a manner authorized by the Division on its website.

#### 62.10 Effective Time and Date

An application to register a mark or other document submitted to the Trademark Section shall become effective at the time and on the date the Division determines the mark or other document complies with law.

#### 62.11 Fees and Methods of Payment

- (1) The fees for filing documents are as follows:

Trademark/Service Mark Application	\$50.00 per class
Renewal	50.00 per class
Assignment	50.00 per class
Registrant Name or Address Amendment	50.00 per class

The fee for a document filed by facsimile is \$45.00 per class for Applications, Renewals and Assignments and \$45.00 for a Registrant Name or Address Amendment. Facsimile transactions will be subject to an additional expedited service fee assessed by a third party vendor.

Other fees, including the fee for copies of documents are set forth in 801 CMR 4.00 Rates, issued by the Executive Office for Administration and Finance.

- (2) Fees may be paid for by the following methods:

- (a) In person: cash, personal or cashier's check or money order;
- (b) By mail: personal or cashier's check or money order; or
- (c) By facsimile: MasterCard, VISA, electronic funds transfer or debit card.

- (3) Personal checks, cashier's check and money orders must be made payable to the Commonwealth of Massachusetts. The drawer must be acceptable to the filing office. Each check must be for an amount equal to the cost of service and be drawn on a bank acceptable to the filing office.
- (4) Payment by MasterCard, VISA or debit card shall be accepted by the filing office for facsimile transactions. Remitters shall provide the Division with the following information:
  - (a) the card number;
  - (b) the expiration date of the card;
  - (c) the name of the approved card issuer;
  - (d) the name of the person or entity to whom the card was issued; and
  - (e) the billing address for the card.
- (5) Payment by electronic funds transfer under National Automated Clearing House Association (NACHA) Rules from remitters who have entered into appropriate NACHA approved arrangements for those transfers, and who authorize the relevant transfer pursuant to 950 CMR 62.00 will be accepted only for facsimile transactions.
- (6) Payment will not be deemed tendered until the issuer or agent has confirmed to the filing office that payment will be forthcoming.

#### 62.12 Computation of Time

Computation of any period of time referred to in 950 CMR 62.00 shall begin with the first day following the act which initiates such period of time when the last day of the period so computed is a day on which the office is closed, the period shall run until the end of business on the date the Division is next open for business when such period of time, with intervening Saturdays, Sundays and legal holidays counted is five (5) days or less than said Saturdays, Sundays and legal holidays shall be excluded from the computation.

#### 62.13 Registration

An applicant who uses a mark in the Commonwealth may file an application for registration with the Division. The application for registration consists of a form supplied by the Division or a document formatted in the same manner as the Division form. The application for registration shall contain:

- (1) the applicant's name and business address;
- (2) if the applicant is a business entity, the type of entity and the state and date of organization;
- (3) if applicant is a partnership, the names of the general partners;

- (4) whether the applicant is seeking to register a trademark or a service mark;
- (5) a written description of the mark;
- (6) a brief description of the goods or services used in connection with the mark;
- (7) for each class, the number and class in which the goods or services fall;
- (8) a brief description of how the mark is used in connection with the goods or services;
- (9) the date the mark was first used anywhere, and in Massachusetts;
- (10)(a) whether an application to register the mark or portions of the mark have been filed in the United States Patent and Trademark Office;
  - (b) if yes, for each application, provide the filing date and serial number; and
  - (c) the status of the application; and
  - (d) if the application has been refused, provide the reason for refusal.
- (11) a statement that the applicant is the owner of the mark, that the mark is in use, and that to the best of the applicant's knowledge, no other person has registered either federally or in Massachusetts or has the right to use the mark in identical form or in such near resemblance as to be likely, when applied to the goods or services of such person, as to cause confusion, mistake or deceive.

The application must be signed under the penalty of perjury. It must be accompanied by a specimen showing the mark in use. The specimen cannot be larger than 3" by 3".

The Division may require the applicant attach to the application a disclaimer of any exclusive right to use any descriptive, generic or geographically descriptive component of the mark.

#### 62.14 Refusal to Register

The Division may refuse to register a mark if:

- (1) the mark consists of or comprises immoral, deceptive or scandalous matter;
- (2) the mark consists of or comprises matter which may disparage or falsely suggest a connection with persons, institutions, beliefs or national symbols;
- (3) the mark consists of or comprises the flag or coat of arms or other insignia of the United States or any state, municipality or other foreign nation or any simulation thereof;
- (4) the mark consists of or comprises the name, signature or portrait of a living individual without written consent; or
- (5) the mark consists of a mark which is merely descriptive or deceptively mis-descriptive of the goods or services of the applicant. A mark is descriptive if it describes a purpose, characteristic or quality of the goods. A mark is geographically descriptive if the mark uses geographic location to identify goods or services. A mark may also be descriptive if it is primarily a surname;

- (6) The mark is likely to cause confusion with a previously registered mark or a trade name currently in use.

#### 62.15 Procedure Upon Refusal to File

If the Secretary finds that a document does not comply with law or contain the information required by 950 CMR 62.00, the Division shall notify the applicant in writing and specify the reasons for refusal. The notice may be posted on the Division's website, sent by mail, postage pre-paid, to the address provided by applicant, or if the applicant has provided the Division with an electronic mail address, to such address. The applicant shall have a reasonable period of time specified by Secretary in which to reply or amend the application, in which event the application shall be re-examined. If the applicant fails to reply or amend within the specified period, the application shall be considered abandoned. This procedure may be repeated until the Secretary notifies applicant of his intent to finally refuse registration of the mark. Applicant may, within twenty (20) days of the date of the notice, request to be heard at an adjudicatory proceeding before the Division subject to the provisions of M.G.L. c.30A, the State Administrative Procedure Act. The proceedings shall be governed by and conducted in accordance with 950 CMR 101, the Rules and Regulations for the Conduct of Adjudicatory Proceedings before the Corporations Division. Upon the expiration of the twenty (20) day period or conclusion of the adjudicatory proceedings, if applicable, the Secretary shall issue a notice of final refusal to register. Upon such notice, applicant may seek a writ of mandamus to compel registration.

#### 62.16 Renewal

Registration of a mark is effective for a term of five years from the date of the registration. A mark may be renewed for an additional five-year period by application filed within six months before the expiration of the term.

The application for renewal consists of a form supplied by the Division or a document formatted in the same manner as the Division form. The application for renewal shall contain:

- (1) the applicant's name and business address;
- (2) a written description of the mark;
- (3) for each class, the number and class in which the goods or services fall;
- (4) the registration date and number;
- (5) a statement that the renewal applicant is the owner of the mark, that the mark has been and is still in use in Massachusetts, and that the attached specimen shows actual use of the mark on or in connection with the goods or services in the class noted.

The renewal application must be signed under penalty or perjury. It must be accompanied by a specimen showing the mark in use. The specimen cannot be larger than 3" by 3".

#### 62.17 Assignment

A mark that has been registered with the Division may be assigned by a duly executed writing. The assignment may be recorded by filing an application with the Division. The application for assignment consists of a form supplied by the Division or a document formatted in the same manner as the Division form. The application for assignment shall contain:

- 1) the registrant's name and business address;
- 2) a written description of the mark;
- 3) for each class, the number and class in which the goods or services fall;
- 4) the registration date and number;
- 5) a statement that the registrant assigns the mark and its registration; and
- 6) the name and business address of the assignee.

The assignment must be signed by the assignor and assignee under penalty of perjury. An assignment of any registration is void against any subsequent purchaser for valuable consideration without notice, unless recorded with the Division within three months after the date thereof or before the subsequent purchase.

#### 62.19 Registrant Name or Address Change

A registrant that has effected a change of name or change of address may file an amendment changing its name and/or address. The amendment consists of a form supplied by the Division or a document formatted in the same manner as the Division form. The amendment shall contain:

- 1) the applicant's name and business address;
- 2) a written description of the mark;
- 3) for each class, the number and class in which the goods or services fall;
- 4) the registration date and number; and
- 5) the registrant's new name; and/or
- 6) new business address.

The amendment must be signed by the registrant under penalty of perjury.

#### 62.20 Cancellation

The Division may cancel a mark where the registrant has voluntarily requested cancellation, where the mark is not renewed, or where the superior court has found:

- a) that the mark has been abandoned;
- b) that the registrant is not the owner of the mark;
- c) that the registration was granted improperly or fraudulently;



- d) that the mark has become generic for goods or services for which it was registered;
- e) that the mark is so similar as to cause confusion or be mistaken for a mark registered by another person in the U.S. Patent and Trademark Office prior to the date of filing the application for registration and has not been abandoned; or
- f) that other grounds sufficient to warrant cancellation exist.

The request for cancellation must contain:

- 1) the registrant's name and business address;
- 2) a written description of the mark;
- 3) the number and classification in which the goods or services fall;
- 4) the registration date and number;
- 5) a. a statement that the registrant requests cancellation; or  
b. a copy of the superior court order of cancellation.

If the request for cancellation is made by the registrant, such request shall be signed under penalty of perjury. There is no fee for filing a request for cancellation.

62.21 Classification of Goods and Services are as follows:

#### Class 1 Chemicals

Chemicals used in industry, science, photography, as well as in agriculture, horticulture, forestry; unprocessed resins, unprocessed plastics; manures; fire extinguishing compositions; tempering and soldering preparations; chemical substances for preserving foodstuffs; tanning substances; adhesive used in industry.

#### Class 2 Paints

Paints, varnishes, lacquers; preservatives against rust and against deterioration of wood; colourants, mordants; raw natural resins; metals in foil and powder form for painters and decorators, printers and artists.

#### Class 3 Cosmetics and Cleaning Preparations

Bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations; soaps; perfumery, essential oils, cosmetics, hair lotions; dentifrices.

Class 4 Lubricants and Fuels; Industrial oils and greases; lubricants; dust absorbing; wetting and binding compositions; fuels (including motor spirit) and illuminants; candles and wicks for lighting.

#### Class 5 Pharmaceuticals

Pharmaceutical and veterinary preparations; sanitary preparations for medical purposes; dietetic substances adapted for medical use; food for babies; plasters; materials for dressings; material for stopping teeth, dental wax; disinfectants; preparations for destroying vermin; fungicides, herbicides

#### Class 6 Metal Goods

Common metals and their alloys; metal building materials; transportable buildings of metal; materials of metal for railway tracks; non-electric cables and wires of common metal; ironmongery, small items of metal hardware; pipes and tubes of metal; safes; goods of common metal not included in other classes; ores.

#### Class 7 Machinery

Machines and machine tools; motors and engines (except for land vehicles); machine coupling and transmission components (except for land vehicles); agricultural implements other than hand-operated; incubators for eggs.

#### Class 8 Hand Tools

Hand tools and implements (hand operated); cutlery; side arms; razors.

#### Class 9 Electrical and Scientific Apparatus

Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signaling, checking (supervision), lifesaving and teaching apparatus and instruments; apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers, recording discs; automatic vending machines and mechanisms for coin operated apparatus; cash registers, calculating machines, data processing equipment and computers; fire extinguishing apparatus.

#### Class 10 Medical Apparatus

Surgical, medical, dental and veterinary apparatus and instruments, artificial limbs, eyes and teeth; orthopedic articles; suture materials.

#### Class 11 Environmental Control Apparatus

Apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes.

#### Class 12 Vehicles

Vehicles; apparatus for locomotion by land, air or water.

#### Class 13 Firearms

Firearms, ammunition and projectiles; explosives; fireworks.

#### Class 14 Jewelry

Precious metals and their alloys and goods in precious metals or coated therewith, not included in other classes; jewelry, precious stones, horological and other chronometric instruments.

#### Class 15 Musical Instruments

Musical instruments

#### Class 16 Paper Goods and Printed Matter

Paper, cardboard and goods made from these materials, not included in other classes; printed matter; bookbinding material, photographs; stationery, adhesives for stationery or household purposes; artists' materials; paint brushes; typewriters and office requisites (except furniture); instructional and teaching material (except apparatus); plastic materials for packaging (not included in other classes); printers' type; Printing blocks.

#### Class 17 Rubber Goods

Rubber, gutta-percha, gum, asbestos, mica and goods made from these materials and not included in other classes; plastics in extruded form for use in manufacture, packing stopping and insulating materials; flexible pipes, not of metal.

#### Class 18 Leather Goods

Leather and imitations of leather, and goods made from these materials and not included in other classes; animal skins, hides; trunks and traveling bags, umbrellas, parasols and walking sticks; whips, harness and saddlery.

#### Class 19 Non-metallic building materials

Building materials (nonmetallic); nonmetallic rigid pipes for building; asphalt, pitch and bitumen; nonmetallic transportable buildings; monuments, not of metal.

#### Class 20 Furniture and Articles not Otherwise Classified

Furniture, mirrors, picture frames, goods (not included in other classes) of wood, cork, reed, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerschaum, and substitutes for all these materials, or of plastics.

#### Class 21 Houseware and Glasses

Household or kitchen utensils and containers (not of precious metal or coated therewith); combs and sponges; brushes (except paint brushes); brush-making materials; articles for cleaning purposes; steelwool; unworked or semi-worked glass(except glass used in building); glassware, porcelain and earthenware, not included in other classes.

#### Class 22 Cordage and Fibers

Ropes, string, nets, tents, awnings, tarpaulins, sails, sacks and bags (not included in other classes); padding and stuffing materials (except of rubber or plastics); raw fibrous textile materials.

#### Class 23 Yarns and Threads

Yarns and threads for textile use.

#### Class 24 Fabrics

Textiles and textile goods, not included in other classes; bed and table covers.

#### Class 25 Clothing

Clothing, footwear and headgear.

#### Class 26 Fancy Goods

Lace and embroidery, ribbons and braid; buttons, hooks and eyes, pins and needles; artificial flowers.

#### Class 27 Floor Coverings

Carpets, rugs, mats and matting; linoleum and other materials for covering floors; wall hangings (non-textile).

#### Class 28 Toys and Sporting Goods

Games and playthings; gymnastic and sporting articles not included in other classes; decorations for Christmas trees.

Class 29 Meats and Processed Foods

Meat, fish, poultry and game; meat extracts; preserved, dried and cooked fruits and vegetables; jellies, jams, compotes; eggs, milk and milk products; edible oils and fats.

Class 30 Staple Foods

Coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee; flour, and preparations made from cereals, bread, pastry and confectionery, ices; honey, treacle; yeast, baking-powder; salt, mustard; vinegar, sauces (condiments); spices; ice.

Class 31 Natural Agricultural Products

Agricultural, horticultural and forestry products and grains not included in other classes; living animals; fresh fruits and vegetables; seeds; natural plants and flowers; foodstuffs for animals, malt.

Class 32 Light Beverages

Beers; mineral and aerated waters and other nonalcoholic drinks; fruit drinks and fruit juices; syrups and other preparations for making beverages.

Class 33 Wines and Spirits

Alcoholic beverages (except beers).

Class 34 Smokers' Articles

Tobacco; smokers' articles; matches.

Classification of **services** are:

Class 35 Advertising and Business Management

Advertising; business management; business administration; office functions.

Class 36 Insurance and Financial

Insurance; financial affairs; monetary affairs; real estate affairs.

Class 37 Building Construction and Repair

Building construction; repair; installation services.

Class 38 Telecommunications

Telecommunications

Class 39 Transportation and Storage

Transportation and storage of goods; travel arrangement.

Class 40 Treatment of Materials

Treatment of Materials.

Class 41 Education and Entertainment

Education; providing of training; entertainment; sporting and cultural activities.

Class 42 Computer, Scientific and Legal

Computer, scientific and technological services and research and design relating thereto; industrial analysis and research services; design and development of computer hardware and software; legal services.

Class 43 Hotels and Restaurants

Services for providing food and drink; temporary accommodations.

Class 44 Medical, Beauty and Agriculture

Medical services; veterinary services; hygienic and beauty care for human beings or animals; agriculture, horticulture and forestry services.

Class 45 Personal

Personal and social services rendered by others to meet the needs of individuals; security services for the protection of property and individuals.